

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN DEAN THURLOW,)	
)	
Petitioner,)	
)	1:16CV883
v.)	1:11CR48-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER AND RECOMMENDATION

Petitioner, a federal prisoner, submitted an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Where a petitioner is attacking the execution and not imposition of a sentence, his petition is properly before the court pursuant to § 2241. See, e.g., Youngworth v. United States Parole Commission, 728 F. Supp. 384, 388 (W.D.N.C. 1990). However, Petitioner challenges his convictions and the legality of his sentences, not their execution. Therefore, his claims are not appropriate under § 2241, but must instead be brought in a Motion to Vacate, Correct, or Set Aside Sentence under 28 U.S.C. § 2255. In fact, Petitioner already filed a Motion under § 2255 (1:11CR48-1, Docket Entry 130; 1:16CV521). The undersigned ordered a response from the Government in that case, which remains pending. Petitioner must raise any claims challenging the legality of his convictions or sentences in that case. The present § 2241 Petition should be dismissed without prejudice to him doing so.

Petitioner also filed a Motion (Docket Entry 3) seeking a hearing and a Motion (Docket Entry 4) seeking to dismiss his criminal case, as well as an Application (Docket Entry 1) to proceed *in forma pauperis*. He later paid the \$5.00 filing fee in the case. The Motions seeking a hearing and dismissal are further attacks on Petitioner's convictions which must be raised in Petitioner's pending § 2255 proceeding. Therefore, they should also be dismissed without prejudice to him raising his claims or arguments in that proceeding. As for the *in forma pauperis* request, Petitioner's payment moots it, but the dismissal of the case necessitates the return of the payment to Petitioner. Therefore, *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation and that the Clerk's Office is ordered to return Petitioner \$5.00 payment to him.

IT IS THEREFORE RECOMMENDED that this action be dismissed and that Petitioner's Motions (Docket Entry 3, 4) seeking a hearing and the dismissal of one of his convictions be denied *sua sponte* without prejudice to Petitioner pursuing his claims in his pending § 2255 proceeding.

This, the 5th day of July, 2016.


Joe L. Webster
United States Magistrate Judge